

The only issue before the Board on this appeal is whether claimant's April 22, 2003 accident arose out of her employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and after considering the parties' arguments, the Board finds and concludes:

The preliminary hearing Order should be affirmed. The Board finds no reason to disturb the Judge's finding that claimant's April 22, 2003 accident arose out of her employment with respondent.

Claimant is employed by respondent as an operator/packer. On April 22, 2003, claimant injured her left leg, knee and back when she twisted her upper torso while stepping back from the machine that she was operating and her left knee buckled. This was the first time claimant had experienced problems with that knee. Claimant described the accident, as follows:

I was sitting at my machine for the morning. And I had stepped back to turn. I think it was to move something out of the way. And as I turned, my knee gave out and I ended up catching myself on some buckets.<sup>1</sup>

Only those accidents that arise out of and in the course of employment are compensable under the Workers Compensation Act.<sup>2</sup> Before an accident arises out of employment, there must be a causal connection between the accident and the nature, conditions, obligations, or incidents of the employment.<sup>3</sup>

This court has had occasion many times to consider the phrase "out of" the employment, and has stated that it points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. . . .

This general rule has been elaborated to the effect that an injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury.

An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment. . . . [T]he foregoing tests exclude an

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<sup>1</sup> P.H. Trans. at 10-11.

<sup>2</sup> See K.S.A. 44-501.

<sup>3</sup> See *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

injury not fairly traceable to the employment and not coming from a hazard to which the workman would have been equally exposed apart from the employment.<sup>4</sup>

The Board concludes that claimant's April 22, 2003 accident arose out of her employment with respondent. At the time of the accident, claimant was operating her assigned machine and in the process of turning to speak to her supervisor. Thus, the accident occurred while claimant was performing an activity related to her work. Accordingly, claimant's accident is directly traceable to her employment.

The Board is aware that respondent contends the *Martin*<sup>5</sup> decision is controlling and, therefore, the Board must find a lack of causal relationship between claimant's accident and her employment. But the Board finds the *Martin* decision is distinguishable upon its facts. In *Martin*, the Kansas Court of Appeals noted that claimant's back injury, which occurred when he exited his truck, resulted from a personal risk and had no relationship to his work. Whether a causal relationship exists between an accident and the nature, conditions, obligations or incidents of the employment is a combined question of law and fact to be decided on a case-by-case basis.

The Judge correctly ruled that claimant's April 22, 2003 accident was compensable under the Workers Compensation Act.

**WHEREFORE**, the Board affirms the September 18, 2003 preliminary hearing Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 2003.

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BOARD MEMBER

c: Gary M. Peterson, Attorney for Claimant  
Mark E. Kolich, Attorney for Respondent  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>4</sup> *Siebert v. Hoch*, 199 Kan. 299, 303-304, 428 P.2d 825 (1967) (citations omitted).

<sup>5</sup> *Martin*, 5 Kan. App. 2d at 298.